Supreme Court, U.S.
FILED

(1)

No. 03-1287 MAR 9 - 2004

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In The

Supreme Court of the United States

MORETON ROLLESTON, JR. LIVING TRUST,

Petitioner,

v.

GAYLE ENGLAND KENNEDY AND
TRUST COMPANY OF GEORGIA,

Respondents.

**On Petition For Writ Of Certiorari
To The Supreme Court
Of The State Of Georgia**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

QUESTION NO. ONE

A judge of the Superior Court of Fulton County, State of Georgia (Judge Issac Jenrette) issued an order which prohibited Moreton Rolleston Jr., an attorney, from filing any new lawsuit in said superior court without the advanced, written permission of said judge. Said order violated Rolleston's rights as a lawyer to pursue his profession.

Rolleston was admitted to practice law in Georgia in 1944. After the end of World War II, Rolleston began the practice of law in January 1946. Rolleston has been admitted to practice law and has been engaged in the practice of law in the following courts:

1. United States Supreme Court
2. 4th, 5th, and 11th Circuit Courts of Appeal
3. U.S. District Courts in Atlanta, Macon and Savannah, Georgia.

Rolleston has tried over 100 cases in the Supreme Court of Georgia and the Court of Appeals of Georgia on appeals from superior courts in Georgia counties of Fulton, DeKalb, Cobb and Glynn. Your petitioner, though 86 years of age, still has active cases in Fulton and Cobb Counties.

The **first** question in this appeal is whether *any judge* can prohibit a lawyer from filing a lawsuit in any court without the prior written consent of said judge.

ANSWER: The Constitution of the United States gives everyone the right to a jury trial. (Amendment VII of the Constitution).

QUESTIONS PRESENTED FOR REVIEW – Continued

QUESTION NO. TWO

Does Judge Jenrette's order place limitations on the freedom of speech of Rolleston and the Trust?

ANSWER: Judge Jenrette's order denies to Rolleston the right of freedom of speech in violation of the First Amendment of the U.S. Constitution. Speech includes oral thoughts and expressions which are protected just as well as written expression such as a lawsuit.

QUESTION NO. THREE

Can a sheriff levy a fi fa in favor of X against property owned by Y? Of course not – but that is exactly what happened in this case. Judge Jenrette issued two orders that the Sheriff of Fulton County should levy on property of Rolleston when it was owned by Moreton Rolleston Jr., Living Trust.

ANSWER: The record title to subject property was in the name of Moreton Rolleston Jr., Living Trust by deed dated February 27, 1995. The fi fa was a court order, for the Sheriff to levy on property of Moreton Rolleston, Jr. The levy constituted the taking of property *without due process* of law in violation of Amendment Five to the Constitution of the United States.

QUESTION NO. FOUR

Can the holder of a fi fa against X property foreclose (by sale at auction) property of Y? The simple answer is "no". Such a procedure violates due process of law as set forth in the Constitution of U.S., Amendment Five.

QUESTIONS PRESENTED FOR REVIEW – Continued

ANSWER: The above proposition, which occurred in this case, violates the right to due process.

QUESTION NO. FIVE

Amendment 5 of the U.S. Constitution prohibits a taking of life, liberty or property without due process of law. Does Judge Jenrette's order deprive the Trust of its right to protect its property by filing a legal contest?

ANSWER: Judge Jenrette's order prohibits the Trust from protecting its property from an illegal seizure.

QUESTION NO. SIX

Rolleston was the attorney for the Trust. Pursuant to Judge Jenrette's order, Rolleston is prohibited from practicing law which he has done since 1946.

ANSWER: Judge Jenrette's order takes away Rolleston's right to practice law in violation of the right to due process guaranteed by Amendment 5 to U.S. Constitution.

LIST OF PARTIES

1. Moreton Rolleston, Jr., Living Trust
2. Gayle England Kennedy
3. Trust Company of Georgia

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CONSTITUTION:

U.S. Const. amend. I 1, 3, 4

U.S. Const. amend. V 1, 4

U.S. Const. amend. VII 1, 2, 4

STATUTES:

28 U.S.C. § 1257(a) 1

PETITION FOR A WRIT OF CERTIORARI

The trial court granted a motion to dismiss filed by defendant Kennedy. The Supreme Court of Georgia upheld said order dismissing the petition.

OPINIONS BELOW

The Opinion of the Supreme Court of Georgia dated January12, 2004 is reproduced in the Appendix at App. 1. The Denial by the Supreme Court of Georgia of Petitioner's Motion for Reconsideration dated January 30, 2004 is reproduced in the Appendix at App. 5.

STATUTORY JURISDICTION

The jurisdiction of this Court to review the judgment of the Supreme Court of Georgia and the order of said court denying Petitioner's Motion for Reconsideration is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The constitutional provisions involved are the United States Constitution, amendments I, V and VII.

STATEMENT OF CASE

Appellee Gayle England Kennedy (hereinafter Kennedy) filed a motion to dismiss the complaint filed by

Appellant Moreton Rolleston, Jr., Living Trust (hereinafter Trust). The lower court granted said motion to dismiss based solely on the order in a bill of peace case between Moreton Rolleston, Jr., individually and other parties who were not named as parties in subject litigation. In another case between Rolleston and the Estate of Rebecca Wight Cherry Sims, Judge Isaac Jenrette of Fulton County Superior Court, State of Georgia, issued an order that Rolleston was prohibited from filing any lawsuit in Fulton Superior Court without prior, written consent of Judge Jenrette.

Appellee Trust Company of Georgia did not file a notice to dismiss.

On appeal, the Georgia Supreme Court held that Judge Jenrette's order applied to the Trust, as well as Rolleston, even though the Trust was not named in said order.

ARGUMENT

RE: QUESTION ONE

Judge Jenrette's order in the separate peace bill that Rolleston could not file a complaint in Fulton Superior Court without the Judge's written, prior consent, in substance and effectively, deprived Rolleston of his right to practice law and to make a living. If Rolleston had violated any law that would prohibit him from practicing law, then Rolleston was entitled to a jury trial as guaranteed by the 7th Amendment to the U.S. Constitution.

RE: QUESTION TWO

Judge Jenrette's order denied to Rolleston the right of freedom of speech in violation of the First Amendment of the U.S. Constitution.

RE: QUESTION THREE

In this case the Sheriff was authorized by court order (fi fa) to levy on property belonging to Rolleston. Since said property was owned by the Trust, the levy was illegal and constituted a violation of Amendment Five of the U.S. Constitution. The decision in this case will affect every square inch of land in Georgia and in the United States.

The granting of the motion to dismiss was illegal and was contrary to previous rulings of Georgia Supreme Court in the following cases:

(a) *Residential Devs. Inc. vs. Mann*, 225 GA 393, p. 397 which held as follows:

> "Motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that plaintiff would not be entitled to relief under any state of facts which could be proved in support of his claim.

(b) Also see the following cases:

Stevens vs. Stevens, 227 GA 410, p. 411

Gill vs. Myrick, 228 GA 253, p. 259

Tench vs. Ivie, GA App. 114, p. 115

Poole vs. City of Atlanta, 117 GA App. 432, p. 434

City of Rome vs. Tuck, 235 GA 223, p. 225

Massy vs. Perkerson, 129 GA App. 895, p. 896

Richter vs. D. & M. Associates, 278 GA 599

RE: QUESTIONS FOUR, FIVE AND SIX

The facts described in questions numbered 4, 5 and 6 violate the right to due process guaranteed by Amendment 5 in the U.S. Constitution.

CONCLUSION

You are charged by law and by honor to uphold the Constitution of the United States.

There are six violations of Amendments 1, 5 and 7 to the Constitution, any one of which would require reversal.

Every time **any** court does not honor the Constitution, some freedom is lost.

Respectfully submitted,

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APPENDIX A

In the Supreme Court of Georgia

Decided: January 12, 2004

S03A1738. MORETON ROLLESTON, JR., LIVING TRUST v. KENNEDY et al.

CARLEY, Justice.

In 1995, the Estate of Sims (Estate) obtained a $5,200,000 judgment in a legal malpractice action against Moreton Rolleston, Jr. (Rolleston). *Rolleston v. Cherry,* 226 Ga. App. 750 (487 SE2d 354) (1997). Prior to entry of that judgment, Rolleston transferred all of his assets, including a beach cottage on Sea Island, to the Moreton Rolleston, Jr., Living Trust (Trust). In a subsequent suit, the trial court set aside those conveyances as fraudulent and awarded over $4.1 million in damages. *Rolleston v. Estate of Sims,* 253 Ga. App. 182 (558 SE2d 411) (2002); *Rolleston v. Cherry,* 237 Ga. App. 733 (521 SE2d 1) (1999). The Estate levied on the Sea Island property and acquired title at the Sheriff's sale. Rolleston filed a series of lawsuits against the Estate and the Sheriff, and threatened prospective purchasers with further litigation. Pursuant to OCGA § 23-3-110, the trial court granted a bill of peace and perpetually enjoined Rolleston and any entity which he owns or controls from claiming an adverse interest in the property or filing any lawsuit in the jurisdiction of the trial court without its prior written approval. The perpetual injunction also provided that, without such approval attached to the complaint, the trial court would summarily dismiss the action. On November 25, 2002, we affirmed this order without opinion. *Rolleston v. Cherry,* 275 Ga. XXV.

Gayle England Kennedy purchased the Sea Island cottage from the Estate. The Trust filed this action against her and Trust Company of Georgia, alleging that the Estate never obtained title to the property because the writ of fi fa was erroneously directed to Rolleston individually instead of the Trust. The trial court summarily dismissed the complaint with prejudice, and further found that none of the Trust's claims has merit and that, for the reasons stated in the motion and the answer and defenses of Ms. Kennedy, the Trust is not entitled to any relief. The Trust appeals.

> (a) It being the interest of this state that there shall be an end of litigation, equity will entertain a bill of peace: (1) To confirm some right which has been previously satisfactorily established by more than one legal trial and is likely to be litigated again; (2) To avoid a multiplicity of actions by establishing a right, in favor of or against several persons, which is likely to be the subject of legal controversy; or (3) In other similar cases. (b) As ancillary to this jurisdiction, equity will grant perpetual injunctions.

OCGA § 23-3-110. Prevention "'of vexatious, oppressive and ruinous litigation is a frequent cause for the exercise of equity jurisdiction, and injunctions to restrain a multiplicity of suits in such cases are not only permitted, but favored, by the courts.' [Cit.]" *Allstate Ins. Co. v. Hill,* 218 Ga. 430, 434 (2), (128 SE2d 321) (1962). See also *Howard v. Sharpe,* 266 Ga. 771, 772 (1) (470 SE2d 678) (1996) (requiring prior approval for filing any lawsuits was a reasonable restriction); *Smith v. Adamson,* 226 Ga. App. 698, 700 (3) (487 SE2d 386) (1997) (limitations on ability to file lawsuits, including prior court approval, did not

totally deprive the litigant of meaningful access to the courts and was reasonable under the circumstances). Compare *In re Lawsuits of Carter,* 235 Ga. App. 551 (510 SE2d 91) (1998).

We concluded that the trial court correctly applied these principles when we affirmed the bill of peace and perpetual injunction without opinion. Such affirmance has "no precedential value." Supreme Court Rule 59. However, "our unreported nonprecedential decisions are still binding on the parties, for they establish the law of the case as provided by OCGA § 9-11-60(h)." *Smith v. Nasserazad,* 247 Ga. App. 457 (1) (544 SE2d 186) (2001). Thus, the bill of peace and perpetual injunction is binding on Rolleston and those in privity with him, including the Trust, and they are collaterally estopped from relitigating the propriety of that order in a suit against the Estate or its privies, including Ms. Kennedy. *Smith v. Nasserazad,* supra at 457-459 (2, 3). Nor can the Trust relitigate Rolleston's or its own interest in the Sea Island property.

Since the Trust's complaint did not have prior written court approval attached and it involved a claim of an adverse interest in the property by the Trust, an entity owned and controlled by Rolleston, the trial court's summary dismissal of the complaint was correct based either on the bill of peace and perpetual injunction or the prior judicial determinations of Rolleston's and the Trust's claims to the property. See *Smith v. Nasserazad,* supra at 459 (3). Contrary to the Trust's further contention, the trial court's dismissal properly applied to the entire complaint, and no claim remains against any alleged privy of Ms. Kennedy, including Trust Company of Georgia and its successor SunTrust.

Although neither appellee has moved this Court to impose a penalty for frivolous appeal, we have the authority to do so on our motion pursuant to Supreme Court Rule 6. Accordingly, the maximum penalty of $2,500 is hereby imposed against Rolleston and the Trust.

Judgment affirmed and penalty imposed. All the Justices concur.

APPENDIX B

SUPREME COURT OF GEORGIA

Case No. S03A1738 Atlanta, January 30, 2004

The Honorable Supreme Court
met pursuant to adjournment.

The following order was passed:

MORETON ROLLESTON, JR., LIVING TRUST v. GAYLE ENGLAND KENN

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Sherie M. Welch, Clerk